

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LEONARD VAUGHN OLIPHANT,

Plaintiff,

v.

BRIAN T. MOYNIHAN, et al.,

Defendants.

Case No. 15-cv-01187-HSG

**ORDER REGARDING PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS**

Re: Dkt. No. 36

On May 18, 2015, Plaintiff Leonard Vaughn Oliphant filed an Opposition to the Motion to Dismiss filed by Defendants Brian T. Moynihan and Bruce R. Thompson. Dkt. No. 36. Oliphant's Opposition does not substantively address the arguments contained in Defendants' Motion. Instead, Oliphant argues that—despite filing a timely motion to dismiss—Moynihan and Thompson were still required to file an Answer to Oliphant's Amended Complaint and, having not done so, “are squarely in default.” *Id.* at 6. Oliphant is mistaken.


A motion under Rule 12 of the Federal Rules of Civil Procedure automatically alters the time for filing a responsive pleading. *See* Fed. R. Civ. P. 12(a)(4) (responsive pleading due 14 days after notice of the court's action on the interim motion); *see also Benjamin v. California Dep't of Corr. & Rehab.*, No. 2:12-CV-0392 WBS KJN, 2013 WL 1563336, at *2 (E.D. Cal. Apr. 12, 2013) (“[The deadline to file a responsive pleading] is suspended pending the court's decision on an interim responsive motion.”); *Sobayo v. Chase Home Fin., LLC*, No. C 09-00615 JW, 2009 WL 1330834, at *3 (N.D. Cal. May 13, 2009) (“Under Rule 12(a)(4) of the Federal Rules of Civil Procedure, a motion to dismiss pursuant to [Rule] 12(b)(6) alters the time for filing a responsive pleading.”); *Douglas v. Executive Bd. of the Dry Creek Rancheria Band of Pomo Indians*, No. CV08159SEJLLMB, 2008 WL 4809910, at *1 (D. Idaho Oct. 3, 2008) (“[A] timely motion to dismiss is a responsive pleading sufficient to prevent entry of a default judgment.”). Accordingly,

1 Moynihan and Thompson were not required to answer Oliphant's Amended Complaint during the
2 pendency of their Motion to Dismiss.

3 If Oliphant opposes the relief sought by Moynihan and Thompson on substantive grounds,
4 he must file an Opposition providing the legal basis for his opposition no later than May 29, 2015.
5 See Dkt. No. 35 (granting Oliphant's second request for an extension of time).

6 **IT IS SO ORDERED.**

7 Dated: May 20, 2015

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9 HAYWOOD S. GILLIAM, JR.
10 United States District Judge
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